

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUNIZ, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, THOMAS BAKER and JOHN
DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES
ALEX FIELDS, JR., VANGUARD
AMERICA, ANDREW ANGLIN,
MOONBASE HOLDINGS, LLC, ROBERT
“AZZMADOR” RAY, NATHAN DAMIGO,
ELLIOT KLINE a/k/a/ ELI MOSELY,
IDENTITY EVROPA, MATTHEW
HEIMBACH, MATTHEW PARROTT a/k/a
DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS, LEAGUE
OF THE SOUTH, JEFF SCHOEP, NATIONAL
SOCIALIST MOVEMENT, NATIONALIST
FRONT, AUGUSTUS SOL INVICTUS,
FRATERNAL ORDER OF THE ALT-
KNIGHTS, LOYAL WHITE KNIGHTS OF THE
KU KLUX KLAN, and EAST COAST
KNIGHTS OF THE KU KLUX KLAN a/k/a
EAST COAST KNIGHTS OF THE TRUE
INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3: 17-cv-00072-NKM

**PLAINTIFFS’ RESPONSE TO MOTION TO
STAY DEPOSITION AND APPOINT A GUARDIAN *AD LITEM*
BY DEFENDANT JAMES ALEX FIELDS, JR.**

Plaintiffs, by and through their counsel, hereby respectfully respond to Defendant James A. Fields, Jr.'s Motion to Stay Deposition and Appoint a Guardian *ad Litem* (the "Motion," ECF No. 926). Plaintiffs oppose the Motion to the extent it seeks appointment of a guardian *ad litem* for Defendant Fields, for which there is no basis. If counsel wishes to arrange for an examination of his client's mental condition, he is free to do so.

To the extent the Motion asks the Court to delay Defendant Fields' deposition, such an order is unnecessary at this point based on counsel's representation that Defendant Fields will refuse to testify in the deposition. Plainly, there is no point in proceeding with the deposition at the scheduled date and time, and Plaintiffs are taking steps to cancel arrangements for the deposition to avoid needless expense. Plaintiffs reserve their right to seek appropriate sanctions for this and other discovery failures (e.g., refusal to provide SCA consent, as this Court has ordered). Counsel will meet and confer on that issue.

ARGUMENT

Stay of Deposition. Counsel seeks a court-ordered stay of the deposition of Defendant Fields, representing that "Fields will refuse to testify via a video deposition because of a concern that software will be used to manipulate his testimony making his face on the video appear to say things that he is not saying." Mot. at 2. Based on this clear representation, Defendant Fields is refusing to testify, and therefore there is no reason for the Court to order a stay. Plaintiffs' counsel is suspending the deposition of Defendant Fields based on counsel's representation to avoid unnecessary cost and inconvenience to many parties, without waiving the right to seek appropriate sanctions, and has so informed Defendant Fields' counsel.

Guardian *ad Litem*. Plaintiffs oppose the appointment of a guardian *ad litem* for Defendant Fields because he is represented by counsel. Appointing a guardian *ad litem* is within a district

court's inherent discretion. *See Buchanan County, VA v. Stuart Ray Blankenship, et al.*, 415 F. Supp. 2d 642, 645 (W.D. Va. Dec. 22, 2006); *Wachovia Bank v. Anderson*, 2010 WL 2024488, *1, *3 (E.D. Va. May 18, 2010). Under Fed. R. Civ. P. 17(c)(2) "[t]he court must appoint a guardian ad litem-to protect a minor or incompetent person ***who is unrepresented in an action.***" (emphasis added). Virginia courts will deny a motion for appointment of a guardian *ad litem* where the moving party is already represented by counsel. *See Blankenship*, 415 F. Supp. 2d at 645-46 (denying motions for appointment of guardians *ad litem* where each moving defendant was represented by counsel); *see also Anderson*, 2010 WL 2024488 at *3 ("Since Defendant Leroy L. Anderson, Jr. is currently represented by counsel, the Defendant's Motion for the Appointment of a Guardian Ad Litem is denied.").

Appointing a guardian *ad litem* would be inappropriate here because Defendant Fields is represented by counsel. David Campbell first appeared as counsel for Defendant Fields in this matter on November 9, 2017, and he has continued to represent Fields in this matter since then. *See* Defendant James A. Fields' Answer to Complaint, ECF No. 88 (Campbell appearing on behalf of Fields); Notice of Appearance, ECF No. 156. As discussed above, both the federal rule and Virginia case law contemplate that the appointment of a guardian *ad litem* should be limited to circumstances where a legally incapacitated person is unrepresented. *See, e.g.*, Fed. R. Civ. P. 17(c)(2); *Blankenship*, 415 F. Supp. 2d. at 643; *Anderson*, 2010 WL 2024488 at *3. Defendant Fields cites no rule or case law demonstrating that appointment of a guardian *ad litem* is necessary or appropriate here. If counsel for Defendant Fields believes an evaluation of his client's mental capacity is warranted, he may make appropriate arrangements.

CONCLUSION

WHEREFORE, for the reasons stated above, this Court should deny Defendant Fields' motion to appoint a guardian *ad litem*, and Defendant Fields' motion to stay his deposition should be denied as moot, based on his refusal to testify.

Dated: February 23, 2021

Respectfully submitted,

/s/ David E. Mills

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I further hereby certify that on February 23, 2021, I also served the following *pro se* defendants and non-ECF participants, via electronic mail, addressed as follows:

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